

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6108

PETITION OF MICHAEL AND PAMELA BYRNE

(Hearing held November 12, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, January 12, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(c). The petitioners propose the construction of an accessory structure/detached garage as it is within ten (10) feet of the side lot line. The required side lot line setback is fifteen (15) feet.

The subject property is located at 9609 Main Street, Damascus, Maryland, 20872, in the RE-2C Zone (Tax Account No. 00940392).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 45 x 30 foot detached garage.
2. The petitioner testified that his property is a long, narrow lot and that the septic system for the property is located in the rear yard. The petitioner testified that the proposed garage will replace an existing 24 x 24 foot garage located in the eastern side yard. The petitioner testified that the existing garage is located 5 feet from the eastern side yard boundary and that it receives the water runoff from the street. The petitioner testified that the existing garage was built in 1930 and that the structure has deteriorated because of the water runoff. The petitioner testified that the proposed garage will be sited away from the side yard boundary to alleviate the drainage problems on the lot.
3. The petitioner testified that his lot is 17,400 square feet in size and that locating the proposed garage elsewhere on the lot would eliminate the

existing open-space. The petitioner testified that he currently has no storage in the garage or in the residence and that the proposed garage is 19 feet in height to provide a room above for storage.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the septic system is an improvement on the lot, whose location is not a factor in the Board's evaluation of an application for variance. The narrowness of the lot is not of a degree that renders the lot uniquely constrained, and therefore does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variance. The Board notes that new construction could be built on the property without the need for a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of ten (10) feet from the required fifteen (15) foot side lot line setback for the construction of an accessory structure/detached garage is denied.

The Board adopted the following Resolution:

Board member Wendell M. Holloway was necessarily absent and did not participate in this motion. On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz

Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 12th day of January, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.